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No. 86-436

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

WALTER L. JONES, PRO SE, PETITIONER, ET AL.,
v.
NIAGARA FRONTIER TRANSPORTATION AUTHORITY, ET AL.,

(Case No. 1.)

WALTER L. JONES, PRO SE, PETITIONER, ET AL.,
v.
SIEGFRIED CONSTRUCTION CO., INC., ET AL.,

(Case No. 2)

PETITIONERS SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION

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SUPPLEMENTAL QUESTIONS PRESENTED IN REPLY

1. Whether the District Court Judge's decision to deny the Petitioner's motion for substitution was an abuse of discretion and denial of due process in the No. Two case.

2. Whether the District Court Judge's decision to dismiss the No. One case, as to a deceased party Defendant's estate, without any suggestion being made, upon the Record was an abuse of discretion, and denial of due process, in the No. One case.

ALL PARTIES

See Petitioner's Appendix D, Pages 72 - 73). Also see (R 42, 102, 238, 240, 241, and 244 in the No. One case), and (R 1 in the No. Two case).

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PETITIONER'S SUPPLEMENTAL STATEMENT

The Petitioner, who is Black (Negro), and a member of the protected class, under Title VI of the Civil Rights Act of 1964, was the victiim of deprivation and racial discrimination, through a conspiracy, perpetrated by the Defendants, in concert on the federally funded Buffalo Subway Construction Project, which caused the Petitioner to be injured economically, physically, mentally and emotionally; from which the herein law suits were commenced, by the Petitioner, Pro se, seeking redress, and damages.

The Petitioner addresses two additional issues in this Supplemental Brief, that were not raised in the Petition, or Reply Brief, due to their page limitations. The additional issues were raised in the U.S. Court of Appeals (CA BR, Pages 20-21, 48-50) (CA Reply BR. 21-22).

After the Petitioner's individual claims were terminated in the No. One case, in April of 1981, the Petitioner commenced the No. Two action, in the District Court against certain

individuals, contractors, Unions, and Associations, alleging race and class discrimination, through a conspiracy, that occured after the Petitioner's claims were terminated in the No. One case (R 1-3) in the No. Two case).

On January 12, 1984, Respondent Marshall Davis of Mechanical Contractors filed a Notice of Death in the No. Two case, through their attorney, which did not meet the requirements, under Rule 25(A) of 28 USC (R 14).

On October 10, 1984, Petitioner filed an amended motion in the No. Two case, to substitute the estate and legal representative of the deceased Respondent (R 23) in the No. Two case. On October 11, 1984, the District Court Judge entered an order , directing the Petitioner to show cause, as to why the No. Two case should not be dismissed, as involving claims substantially identical to those dismissed in the No. One case, and ajourned all motions to November 19, 1984 (R 25).

On November 19, 1984, oral argument was heard, and recorded (See R 338 Pg. 11-15, 34-37, 39).

On January 8, 1985, the District Court issued an Order, dismissing the No. Two action,as to the deceased Defendant (R 35). On February 12, 1985, the District Court entered an Order and judgement, dismissing the No. Two case, in its entirety (R39). On March 7, 1985, an appeal was filed by the Petitioner's then attorney, in the No. Two case (R 41).

On May 10, 1985, the Petitioner's then attorneys, and the Respondent's attorney, by conditional stipulation, withdrew the Petitioner's appeal, in the No. Two case, pending a disposition of the District Court's pending decision, as to reinstating the dropped Defendants, in the No. One case, (CA Record under Docket No. 85-7194).

On May 13, 1985, the Petitioner's then attorney filed an amended complaint, with leave of Court, granted on May 2, 1985, in the No. One case, including the deceased party as a Defendant (R 240-241). On May 29, 1985, the District Court entered an Order, directing that the attorney's amended complaint, dated May 10, 1985 was not

properly before the Court, and must be deemed a "nullity", directing that the attorney's proposed amended complaint, attached to affidavit, be deemed filed and served (R 244).

On June 26, 1985, the deceased Defendant's attorney filed a notice of motion to dismiss, in the No. One case (R 246).

On August 5, 1985, the Petitioner filed a notice, discharging his attorney, as to representing himself, and filed a notice of appearance, Pro se, in the No. One case (R 266-267). On August 6, 1985, the Petitioner filed a notice of motion, Pro se, for multiple reliefs, returnable on September 16, 1985, in the No. One case (R 29=69). On August 27, 1985, the deceased Defendant's attorney filed a Reply affidavit, in support of their position (R 290).

On September 16, 1985, the District Court Judge, before activating the court recorder, "flatly" denied the Petitioner's motion to be heard in open court, in the No. One case (R 340 Pg. 5).

The District Court heard argument, by the at-

torneys, on September 16, 1985, and stated, from the bench, that the deceased party was dismissed from the No. One action (R 339 Pg. 28-33)

On September 20, 1985, the Petitioner, Pro se forwarded a letter to the U.S. Court of Appeals, reinstating the conditional withdrawn appeal, in the No. Two case, which was filed on September 23, 1985. See (CA Record, under Docket No. 85-7194). On September 25, 1985, the District Court Judge formally dismissed the complaint, as to the deceased Defendant's, from the No. One case (R 315).

On January 23, 1986, the U.S. Court of Appeals dismissed the appeal in the No. One action (R 343) (CA Record, under Docket No. 85-7194).

On April 16, 1986, the U.S. Court of Appeals denied the Petitioner's timely Petition for a rehearing, and failed to consider the Petitioner's application for permission to amend complaint, that was filed in the U.S. Court of Appeals, on March 12, 1986. See (CA Record, under Docker No. 85-7194)

On May 8, 1986, the U.S. Court of Appeals

affirmed the District Court's decision and judgement, in the No. Two case. See (CA Record 85-7194), which, in effect, denied the Petitioner his fundamental and constitutional rights to due process.

The Record in the No. Two case shows that the notice of death, filed on behalf of the deceased party's estate, did not meet the requirements under Rule 25(A) of 28 USC, in that the notice did not list the names of the executors of the deceased party's estate, and was made by the deceased, through counsel (R 14).

The Record in the No. One case shows that no notice whatsoever was filed, suggesting the deceased Respondent's death, upon the Record, after being made a party to the No. One case (R 241 - 315).

In light of there being no disposition , upon the merits, and no answering of the Petitioner's Interrogatories, in either case, regarding the deceased party's participation in the alleged conspiracy, the Petitioner respectfully suggests

that the writs and reversal of the order, entered on January 8, 1985, in the No. Two case, and reversal of the order, entered on September 25, 1985, in the No. One case should be granted, together with leave to amend complaint, and substitute the executors of the deceased's estate, in the No. Two case.

ARGUMENT I

THE DISTRICT COURT JUDGE ABUSED HIS DISCRETION AND DENIED THE PETITIONER. DUE PROCESS, BY DISMISSING THE NO. TWO CASE, UPON A NOTICE OF DEATH, THAT DID NOT MEET THE REQUIREMENTS, UNDER RULE 25 (A) of 28 USC.

It was held, in 1980, by the Ditrict Court Judge, whose present decision is now being contested before this Court, that a "Statement of death may be made, either by the estate of the deceased party, or by other party, but not by the deceased party herself, or himself, acting through counsel". Fed. Rule Civ. Proc. - Rule 25(A), 28 USC; AlJundi v. Rockerfeller, 88 FRD 244 (1980). This however, is exactly the circumstances in the No. Two case, in that the notice was filed by the deceased, acting through counsel, and not by the executors , as required;

Rende v. Kay, 415, F2d 983, 985 (1969); Boggs v. Dravo, Corp., 532 F2d 897 (1976).

The District Court's decision to dismiss the Petitioner Pro se's case, as against the deceased party's estate, upon an improper statement of death, and without allowing discovery, is patently erroneous. Eakins v. Reed, 710 F2d 184 (1983); Sames V. Cable, 732 F2d 49 (1984); Rules 19(A) and 56(F) of 28 USC.

ARGUMENT II

THE DISTRICT COURT JUDGE ABUSED HIS DISCRETION AND DENIED THE PETITIONER DUE PROCESS, BY DISMISSING THE NO. ONE ACTION, AS AGAINST THE DECEASED PARTY RESPONDENT, WITHOUT ANY REQUIRED NOTICE BEING FILED, BY THE RESPONDENT, PURSUANT TO RULE 25(A) 28 USC.

The District Court Judge's decision to dismiss the complaint, as against the deceased party, without notice whatsoever, in the No. One case, was patently erroneous, and a denial of the Petitioner's rights to due process; AlJundi v. Rockerfeller, 58 FRD 249 (1980); Rende v. Kay, 415 F2d 983, 985 (1969); Boggs v. Dravo Corp., 532 F2d 897 (1976); Armstrong v. Manzo, 350 U.S. 545 (1965).

CONCLUSION

For the supplemental reasons stated in this Supplemental Brief, the Petitioner respectfully requests that the Writs be granted, reversing the Order entered on January 8, 1985, in the No. Two case, and reversing the order, entered on September 25, 1981, in the No. One case, granting the Petitioner leave to substitute the executors of the deceased party's estate, in the No. Two case; together with all other reliefs requested in the Petition, and Reply Brief submitted to this Court, by the Petitoner Pro se.

Respectfully submitted,

WALTER L. JONES

DATED: Buffalo, New York
October 24, 1986.